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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ON CERTIORARI FROM THE COURT OF APPEALS
APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Cordell Maddox Jr., Presiding Judge

Case No. 2018-CP-04-01409
Appellate Case No. 2019-000754

Taranika Webb, Appellant,

v.

Fairview Gardens, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On July 19, 2018, Appellant Taranika Webb initiated this action by filing a Magistrate's Court form Summons and Complaint in the Court of Common Pleas for Anderson County. (R. 13-16, Complaint.) Appellant served the Summons, which only allowed Respondent Fairview Gardens ("Respondent") ten (10) days to respond rather than the thirty (30) days required under Rule 12(a) of the South Carolina Rules of Civil Procedure, by mail on October 17, 2018. (*Id.*) Respondent filed a Motion to Dismiss or in the Alternative Motion for a More Definite Statement on November 6, 2018. (R. 32, Mtn. to Dismiss.) A hearing was held on Respondent's Motion to Dismiss on January 10, 2019, before the Honorable Judge R. Scott Sprouse. At the conclusion of the hearing, Judge Sprouse instructed Appellant to file an Amended Complaint within thirty (30) days to address the issues raised by Respondent in its Motion to Dismiss. On January 11, 2019, Judge Sprouse issued a Form 4 Order, in which he denied Respondent's Motion to Dismiss and instructed Plaintiff to amend her Complaint within thirty (30) days. (R. 2, Form 4.)

On January 23, 2019, Appellant filed an Amended Complaint with the Anderson County Clerk of Court. (R. 17-19, Am. Compl.) Appellant served counsel for Respondent via mail on or about January 28, 2019. On February 6, 2019, Respondent filed a Motion to Dismiss the Amended Complaint. (R. 33-38, Mtn. to Dismiss.)

The Honorable Judge J. Cordell Maddox Jr., held a hearing on Respondent's Motion to Dismiss on March 19, 2019. (R. 6-12, Order.) On April 5, 2019, Judge Maddox issued an order (the "Order") granting Respondent's motion and dismissed Respondent's Amended Complaint, with prejudice. (*Id.*) On May 6, 2019, Appellant filed her Notice of Appeal with this Court.

FACTS

At the time Appellant filed her Complaint, she was a resident of Respondent's property located in Anderson, South Carolina. Appellant alleges that Respondent promulgated a "handbook" that required it to maintain a habitable living environment. (R. 17-19, Am. Compl p. 1.) Appellant further alleges that there is a "peeping tom" on Respondent's property, and that one day she came home and found keys hanging in her door. (R. 17-19, Am. Compl. pp. 1-2.) Based on these facts, Appellant alleges the following causes of action: breach of contract, negligence, and invasion of privacy. (*Id.*)

STANDARD OF REVIEW

This Court applies the same standard of review as the trial court when reviewing a motion to dismiss. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012). Under Rule 12 of the South Carolina Rules of Civil Procedure, a Circuit Court must dismiss a complaint when the defendant demonstrates the plaintiff's complaint fails to allege facts sufficient to constitute a cause of action. *See* Rule 12(b), SCRCP; *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 67, 651 S.E.2d 305, 307 (2007) ("Generally, in considering a Rule 12(b)(6), SCRCP, motion to dismiss, the trial court must base its ruling solely upon allegations set forth in the Complaint."); *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413 (Ct. App. 2003) (recognizing that a motion to dismiss may be granted when "the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court."). "Viewing the evidence in favor of the Plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to any relief on any theory of the case." *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001) (internal citations omitted).

ARGUMENT

I. Appellant fails to support her argument with citations to legal authority and has, therefore, abandoned those arguments.

"South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). The South Carolina Supreme Court routinely finds arguments with no citations to legal authority to be abandoned. *E.g.*, *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue.").

Neither of Appellant's initial briefs cite to a single legal authority in support of her arguments as to why the trial court should be overturned.[1] (*See generally* 7/10/19 Ap. Br.; 9/6/19 Ap. Br.) In both briefs, Appellant cites only to the South Carolina Rules of Civil Procedure and the South Carolina Code in the table of contents. She also cites to the South Carolina Rules of Civil Procedure in her statement of issues on appeal and lists several cases, statutes, and other authorities in her table of authorities. Appellant, however, does not actually discuss any of these legal authorities or explain how they may apply to this case. Appellant's arguments are, therefore, conclusory statements devoid of any analysis. Accordingly, the Court should find that she has abandoned all issues in this appeal and affirm the judgment of the trial court. *See First Sav. Bank*, 314 S.C. 363, 444 S.E.2d 514.

[1] Appellant filed multiple initial briefs with the Court. She filed her first brief on July 10, 2019. Appellant filed a second, amended brief on September 6, 2019. Appellant did not seek leave of this Court to file an amended brief, and the amended brief does not merely fix typos in her first brief. It is, therefore, unclear which brief the Court accepted as her actual brief. Regardless, Appellant fails to discuss any authority in either brief and has, therefore, abandoned her argument on appeal as outlined above.

II. The trial court properly dismissed Appellant's breach of contract claim.

The trial court properly held that Appellant failed to plead the elements of a breach of contract action or any facts in support of those elements. To support her first cause of action, Appellant alleged that "P.K. Management promised in their handbook to maintain a habitable pleasant living environment;" that Appellant complained of a "peeping tom" living in another apartment; and that Respondent did not respond to her complaints. (R. 17-19, Am. Compl. at p. 1.)

The trial court properly held that "[t]hese facts do not support a cause of action for breach of contract." (R. 6-12, Order at p. 2.) In order to state a cause of action for breach of contract, a party must plead and prove the following elements: (1) the existence of a contract, (2) its breach, and (3) damages caused by such breach. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015) (quoting *S. Glass & Plastics Co., v. Kemper*, 399 S.C. 483, 491-91, 732 S.E.2d 205, 209 (Ct. App. 2012).

First, the trial court properly found that Appellant "did not plead the existence of a contract." (R. 6-12, Order at p. 3.) The allegation that Respondent's "handbook" promises a "habitable pleasant living environment" is insufficient, because "it is essential in setting forth a breach of contract, either the substance of the instrument be averred in the pleading, or that the contract itself be set forth." *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986) (quoting 61A Am.Jur.2d Pleading Section 92 (1981)). Accordingly, the allegation that the "handbook" constitutes a contract, without more, is insufficient to allege the first element of a breach of contract claim. The trial court, therefore, correctly dismissed Appellant's breach of contract cause of action. *See Jones*, 343 S.E.2d at 648 (affirming dismissal where plaintiff failed to set forth pertinent provisions of alleged contract or incorporate contract into complaint.)

Second, Appellant fails to allege Respondent breached a contract or that Appellant was proximately damaged by this breach. Thus, the trial court correctly held that, even assuming, *arguendo*, that a "handbook" was a contract, Appellant's breach of contract claim fails because she did not allege the remaining elements of a breach of contract cause of action or any facts from which an inference should be taken regarding these elements. This Court should, therefore, affirm the trial court.

III. The trial court properly dismissed Appellant's negligence claim.

The trial court properly held the facts alleged by Appellant are "insufficient to support a cause of action for negligence." (R. 6-12, Order at p. 3.) In order to state a cause of action for negligence, a plaintiff must plead and prove: (1) the defendant owed a duty of care to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003).

The facts contained in Appellant's Amended Complaint do not support a single element of a negligence claim. In support of her negligence claim Appellant simply alleges that, on an unspecified day, she came home and there were "keys hanging from [her] door" while the "[l]easing officer [was] at lunch." (R. 17-19, Am. Compl. at p. 2.) These facts, even if taken as true, fail to establish a duty or liability on the part of Respondent. Moreover, Appellant fails to allege any damages arising from this incident or facts that would support an inference that she suffered any damages. The trial court, therefore, correctly dismissed this claim and this Court should affirm the trial court's ruling.

IV. The trial court properly dismissed Appellant's invasion of privacy claim.

The trial court correctly held that Appellant's "allegations fail to state a claim under any of the causes of action for invasion of privacy recognized under South Carolina law." (R. 6-12, Order

at p. 4.) South Carolina recognizes three distinct causes of action related to privacy rights: (1) wrongful appropriation of personality; (2) wrongful publicizing of private affairs; and (3) wrongful intrusion into private affairs. *Snakenburg v. Hartford Cas. Ins. Co., Inc.*, 299 S.C. 164, 170, 383 S.E.2d 2, 5 (Ct. App. 1989) (citing *Rycroft v. Gaddy*, 281 S.C. 119, 314 S.E.2d 39 (Ct. App. 1984); *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989)).

The entirety of Appellant's allegations regarding her invasion of privacy claim are: "Invasion of privacy – Because of what they allowed to happen on this property with the peeping tom and refusing to take this complaint seriously. When it is a crime and also against HUD rules and policy to allow such a thing as this." These facts fail to establish a claim for invasion of privacy.

A cause of action for wrongful appropriation of personality must state facts that establish the intentional, unconsented use of the plaintiff's name, likeness, or identity by the defendant for its own benefit. *Snakenburg*, 299 S.C. at 170, 383 S.E.2d at 5. The Amended Complaint does not allege Respondent used Appellant's name, likeness, or identity for Respondent's benefit. Appellant, therefore, fails to allege a cause of action for wrongful appropriation of personality.

Similarly, the allegations in Appellant's Amended Complaint are insufficient to plead a cause of action for wrongful publicizing of private affairs. To assert this cause of action, Appellant must plead facts sufficient to show that Respondent intentionally disclosed facts in which there is no legitimate public interest, and that the disclosure is such as would be offensive and likely to cause serious mental injuries to a person of ordinary sensibilities. *Snakenburg*, 299 S.C. at 170-171, 383 S.E.2d at 6. The Amended Complaint contains no allegations that Respondent disclosed any facts about Appellant and, therefore, fails to state a claim under this theory.

Finally, the Amended Complaint does not state a claim for wrongful intrusion into private affairs. To sufficiently plead this cause of action, Appellant must plead facts sufficient to establish: (1) an intrusion, (2) into that which is private, (3) that is substantial and unreasonable enough to be legally cognizable, and (4) that the defendant's act or course of conduct was intentional. *Snakenburg*, 299 S.C. at 171-172, 383 S.E.2d at 6. For purposes of the final element, "[a]n act is intentional if: (1) it is done willingly; and either (2) the actor desires the result of his conduct, whatever the likelihood of that result happening; or (3) the actor knows or ought to know the result will follow from his conduct, whatever his desire may be from that conduct." *Id.* (citing *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981)).

The allegations in the Amended Complaint concern a "peeping tom" on Respondent's property and contain no other facts to support Appellant's claim. These allegations are insufficient to allege wrongful intrusion into private affairs on the part of Respondent. Conclusory allegations regarding the independent actions of a third-party do not sufficiently allege an intrusion by Respondent or that there was any intentional conduct by Respondent. *See Gilstrap*, 288 S.C. at 528, 343 S.E.2d at 648 (noting that even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient to state a cause of action). The trial court, therefore, correctly held that Appellant failed to plead the elements of wrongful intrusion into private affairs claim. Accordingly, this Court should affirm the trial court.

CONCLUSION

For the reasons stated, the Court should affirm the order dismissing Appellant's Amended Complaint, with prejudice, by the Circuit Court.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

By: s/ Phillips L. McWilliams

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **Respondent's Final Brief** in the above-captioned case has been served upon pro se Appellant, via electronic mail and First Class U.S. Mail, postage prepaid, as follows:

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Dated this 22nd day of June, 2020